



The only issue before the Board on this appeal is whether claimant sustained personal injury by accident arising out of and in the course of employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes that the preliminary hearing Order should be affirmed.

Claimant alleges that on April 3, 2002, she hit her tailbone on a crate of cigarettes, injuring her back. Claimant described the accident, as follows:

We got busy, and I needed change in the register. We have a gray safe in the store that is down below. The area that we work in is approximately four feet wide, four to five feet wide, and these crates were behind me. When I went down to get change out of the gray safe, I hit directly on my tailbone on these crates, which threw me forward.

Immediately I had pain in my hips, both sides, in the front. It hurt so bad that I stayed down. I didn't want anybody to know that I was hurt. I just stayed down there and kept thinking "Just don't cry."

At the specific time that it happened, Lyle had come out of the office. And he looked at me, and I looked at him, and I went down and stayed there. . . .<sup>1</sup>

According to claimant, she remained on the floor on her hands and knees for approximately two or three minutes while she regained her composure.

At the time of the alleged accident one of respondent's co-owners, Lyle Flanders, was helping inventory the store's merchandise. Claimant testified that she tried to keep Mr. Flanders from knowing she was hurt. But when Mr. Flanders left, claimant allegedly told her store manager and supervisor, Corina Knoll, that she "about killed" herself on the cigarette crates and that she had terrible back pain. Claimant also testified that after the incident the pain caused her to bend over, limp, and hold her back. Claimant testified, in part:

Q. (Mr. McVay) This horrible pain that you were having, did it cause you to bend over, or limp, or hold your back, or anything of that nature?

A. (Claimant) Yes.

Q. Which?

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<sup>1</sup> Hamill Depo. at 12-13.

. . . .

A. All of them. As a matter of fact, I asked Corina. I told her when I told her that I almost killed myself and that my back, I had hurt my back, she said, I have these pain patches; turn around. She actually herself put a pain patch on my back and gave me another one. And I didn't use the other one. I just kept it.<sup>2</sup>

Claimant continued working following the accident. On the Sunday after the incident, which would have been April 7, 2002, claimant went snow skiing with her son. But according to claimant, she was in pain and had to stop skiing. The following Wednesday claimant began experiencing a sinus infection and began missing work for that problem.

On April 23, 2002, claimant first sought medical treatment for her back. According to the office notes from the Wakeeney Medical Group, on that date claimant reported she had injured her back on either April 3 or 5, 2002, when she sat down hard on a crate at work. Claimant also either called or visited the medical group on April 19, 2002, but the progress notes from that date do not mention back symptoms.

Respondent presented several witnesses who contradicted claimant's testimony. Thelma Gilbert, who was a co-employee helping with the inventory, testified that she was working alongside claimant when they were counting the cigarettes and that she did not see claimant fall against the cigarette crates or fall forward to the floor landing upon her knees.

Mr. Flanders testified that he did not see claimant fall to the floor as she has alleged, nor did he notice any outward sign or display that claimant had injured herself or that she was having back problems. Mr. Flanders testified that he did not learn until April 23, 2002, that claimant was alleging she injured herself at work, despite talking with her earlier about her son picking up her paycheck while she was ill.

Ms. Knoll testified that on April 3, 2002, she did not see claimant hit a crate of cigarettes or pitch forward onto her hands and knees. Ms. Knoll also denies that claimant mentioned her back hurting but she admits claimant "said she about killed herself on some crates." Ms. Knoll also testified that claimant continued working after the April 3, 2002 inventory when the alleged accident occurred and that claimant did not appear to have any back problems. According to Ms. Knoll, the first that claimant mentioned a back injury was April 23, 2002, after she had recovered from her sinus problems. On that date, Ms. Knoll provided claimant with an accident report to complete. Ms. Knoll also denies placing a pain patch on claimant's back on April 3, 2002, as claimant testified. Further, Ms. Knoll testified that she reviewed a security videotape for the period in question and did not see any

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<sup>2</sup> Hamill Depo. at 18.

incident as claimant had described. Contrary to claimant's testimony, Ms. Knoll denied being threatened or pressured by respondent regarding her testimony in this claim.

The Board also notes the security videotape introduced into evidence only shows a very limited portion of the area where claimant's accident allegedly occurred and, therefore, neither refutes nor supports claimant's allegations that she sustained a work-related accident on the day in question. Finally, the record does not contain any medical expert's opinion that addresses whether claimant's alleged accident is consistent with her alleged injuries.

Considering the entire record compiled to date, the Board affirms the Judge's conclusion that claimant has failed to prove that she injured her back in an accident that arose out of and in the course of employment. Although there is overwhelming evidence that respondent was conducting an inventory at its store between 10:30 a.m. and 11:30 a.m. on April 3, 2002, there is little evidence to corroborate claimant's allegation that she injured her back during that activity. Conversely, there is ample evidence that directly contradicts claimant's statements. Accordingly, claimant has failed to satisfy her burden of proof that she was injured while working for respondent on April 3, 2002, and, therefore, claimant's request for benefits should be denied.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.<sup>3</sup>

The Board adopts the findings and conclusions set forth in the July 31, 2002 Order that are not inconsistent with the above.

**WHEREFORE**, the Board affirms the July 31, 2002 Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 2002.

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BOARD MEMBER

c: Melvin J. Sauer, Jr., Attorney for Claimant  
James M. McVay, Attorney for Respondent and its Insurance Carrier  
Bruce E. Moore, Administrative Law Judge  
Director, Division of Workers Compensation

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<sup>3</sup> K.S.A. 44-534a.